

Transactions *of* The Chartered Surveyors' Institution

SESSION 1945-46.

AT THE ORDINARY GENERAL MEETING

Held at the Chartered Surveyors' Institution on Monday, 7th January, 1946.

Mr. E. B. GILLETT (*President*) in the Chair.

NEW MEMBERS.

The following members were received by the President prior to the meeting and signed the Register :—

Fellow :

CLARK, ANDREW GEORGE.

Professional Associates :

ASSENHEIM, LOUIS BENJAMIN.

BOTTOMLEY, WILLIAM ERNEST.

CARTER, MAURICE ARTHUR.

HARDING, PHILIP GEORGE.

HYDE, NORMAN FREDERICK.

MORFORD, BRIAN MARK TIDDY.

NARDECCHIA, TITO JACQUES.

ROBERTS, EDWARD IVOR.

ROBINSON, ROBERT JOSEPH.

ROWLAND, FREDERIC.

SHARPE, NORMAN JOHN GURNEY.

WILSON, CAPTAIN JAMES FULTON.

WOODFORD, STANLEY WILSON.

The following Paper was read by Mr. H. G. MAY, B.Sc. (Fellow).

Paper No. 596.

TOWN PLANNING INTERIM DEVELOPMENT, AND THE REPAIR OF WAR DAMAGE.

By H. G. May, B.Sc. (Fellow).

Members will be familiar, no doubt, with the Practice Notes (First and Second Series) issued by the War Damage Commission, and probably will have read the paper by Mr. Michael Rowe, K.C., published in the December issue of the *Journal*.

To keep my remarks within a reasonable compass, I am assuming that members are conversant with the procedure to be followed to obtain the Commission's approval to works proposed to be done which will be the subject of a cost of works payment. Therefore I shall deal only with problems that arise in connection with town planning. To consider an owner's rights under modern town planning legislation it is necessary to refer to the Town and Country Planning Act, 1932, the Town and Country Planning (Interim Development) Act, 1943, the Town and Country Planning Act, 1944, and the Town and Country Planning (General Interim Development) Order, 1945.

There will be a number of cases where reinstatement of war damage has to be done in areas where there is a town planning scheme in force. These are referred to later, but, for the greater part, reinstatement will have to be done in areas where a resolution to prepare a scheme has been made, or is deemed to have been made by the Act of 1943—that is to say, everywhere in England and Wales where a scheme is not in force, or where no resolution had been made at the date of the passing of the Act.

As procedure is regulated by the Order of 1945, it is convenient to consider this first.

TOWN AND COUNTRY PLANNING (GENERAL INTERIM DEVELOPMENT) ORDER.

The Order which came into operation on the 1st May, 1945, expires at the same time as the Emergency Powers (Defence) Act of 1939 (that is to say on the 24th February, 1946) and applies to all land in respect of which a resolution is in force. It replaces the Order of 1933, and although it can be regarded as a temporary measure it merits detailed consideration, as it is likely to be replaced in the near future by an Order similar in terms and not subject to a limitation of time as is the present one.

Certain types of development are permitted by the Order without having to obtain the consent of the Interim Development Authority. These are contained in Article 4 and are divided into five classes:

Class I.—Development authorised by an Act or Order except the erection, alteration, or extension of buildings.

Class II.—Development by a local authority or by statutory undertakers sanctioned before the commencement of the Order.

Class III.—Repair of war damage.

Class IV.—Carrying out of alterations and maintenance except changes in the exterior appearance of buildings and changes of use.

Class V.—Development as described in Part I of the schedule to the Order relating to development by certain statutory undertakers and mining undertakers.

These descriptions are in each case a brief summary of the provisions of the Order which should be referred to for full details.

As to Class III, with which we are particularly concerned, "war damage" has the same meaning as in the War Damage Act of 1943, but the rebuilding, restoration or replacement of buildings for which consent is not necessary is limited to operations which do not involve an increase of cubic content or a material alteration in the exterior.

In many cases such changes are essential and in consequence a consent will be necessary.

It is provided, however, by Article 8 that where an application for consent is submitted which does not involve an increase in cubic content it shall not be refused unless

(a) the design or external appearance would seriously injure the amenities of the neighbourhood and is reasonably capable of modification.

(b) The building will not conform with a proposed building line.

(c) The building or proposed use would conflict with proposed provisions of the scheme, and it would be necessary to secure the removal of or alterations to the building or to prohibit the proposed use thereof.

The observations of the Minister in the Explanatory Memorandum issued with the Order are of interest on this Article. It would seem the intention is that the Article shall operate so as to prevent works which are likely to be the subject of serious objection when a scheme is carried out; for example, the erection of an isolated factory on a congested site in an area now predominantly residential and proposed to be zoned for residential purposes.

It will be observed that the words of Article 8 are somewhat inconsistent with the general rights given in respect of Class III of Article 4, unless it is assumed that Article 8 applies only where a direction has been made under Articles 5 or 6, to which I shall refer again.

If the cube is not to be increased a right to rebuild is given by Article 4, but Article 8 contemplates an application to an Interim Development Authority in cases where no increase in cube is contemplated.

It is suggested, therefore, that it can only apply where the exterior appearance is to be altered, and if this is the case development authorities must necessarily make directions under Articles 5 or 6, referred to later, whenever they are concerned with the control of building lines, use, or site cover.

Reference is made in paragraph 17 of the Explanatory Memorandum to the jurisdiction of the authority extending to building lines and zoning; as I have indicated, this control can only be applied to the reinstatement of a destroyed building by a direction under Articles 5 or 6.

Article 5 provides that, with the consent of the Minister, the development authority may direct that the provisions of Article 4 shall not apply to development within a specified area.

As to the making good of war damage such a direction shall not apply to what might conveniently be described as "temporary works" (that is works necessary for temporarily meeting the circumstances created by the damage).

Regarding operations under Classes III and IV the direction may permit without the need for a consent, operations which do not exceed a cost specified in the direction.

Directions such as these are of the utmost importance and enquiries should always be made to ascertain if one has been made or is pending. It is understood that a large number of them is now before the Minister for consideration.

An example of one in force is that made by the City Corporation on 14th June, 1945, which applies to the whole of the City excluding the Temple.

Under this direction no works, whether in the making good of war damage, or of maintenance or alteration, can be undertaken without consent unless the cost of the operation is less than £300; in effect the consent of the Corporation will be needed for any major works of restoration of war damage.

A similar power to issue a direction in any particular case in respect of operations under Classes II and III is contained in Article 6.

Although this should be remembered, it is unlikely in practice to be so important as the more general powers under Article 5. You will notice that the rights given under the previous Interim Development Order of 1933 in respect of the replacement, alteration or extension of existing buildings are not maintained in the new Order, although the position with regard to compensation under the Act of 1932 to which I will refer later, remains unchanged.

In this connection attention is called to the observations of the Minister in paragraph 8 of the Explanatory Memorandum.

This, in my opinion, is a strong hint to the development authorities that they should be reasonable, and that proposals for making good war damage should only be refused if there are very substantial objections.

It should be noted, perhaps, that directions under Articles 5 and 6 will take the place of directions by the War Damage Commission under Section 20 of the War Damage Act, 1943.

TOWN AND COUNTRY PLANNING (INTERIM DEVELOPMENT) ACT, 1943.

Power is given by this Act to defer consideration of an application relating to proposals not immediately practicable, and if consent is not given within two months, it is now to be deemed to have been refused, and not granted as under the Act of 1932.

This provision may on some occasions create difficulties. It may happen that an owner wishes to establish beyond doubt his right to reinstate in a certain manner after war damage, although rebuilding is not immediately practicable.

In such a case, in the event of his being served "notice of postponement" under Section 2, he has a remedy by approaching the Minister (Section 2 (2) proviso (b)) who may, if he thinks fit, require the interim development authority to determine the application. There is also the right of appeal to the Minister against an adverse decision or the imposition of conditions in a consent.

TOWN AND COUNTRY PLANNING ACT, 1944.

The provisions of Section 45 are of considerable importance in relation to the definitions of "existing building" and "existing use" contained in Section 53 of the Act of 1932. The Act of 1932, Section 19 (2) (ii) (c) permits

the re-erection of an existing building if commenced within two years of destruction. Section 45 of the Act of 1944 extends this time to two years after the "war period," or two years after the coming into operation of a scheme, whichever is the later date. The "war period" is defined as commencing on the 3rd September, 1939, and ending with the expiration of the Emergency Powers (Defence) Act, 1939.

Protection is also given in respect of "existing use" which may have been discontinued during the war period through certain specified causes (*e.g.*, war damage or requisition). This section should be referred to for details of the other causes.

No account is to be taken of any such break in use for the purposes of proviso (1) of the definition of "existing use" in Section 53 of the Act of 1932, which provides that no subsequent use of a building is to be deemed to be an existing use, if it is discontinued for 18 months.

As mentioned before, the Emergency Powers (Defence) Act, 1939, is due to expire on the 24th February, 1946, and it is not known, if, for the purpose of this section, any modification of the definition of the "war period" is likely to be made in new legislation.

In many cases there is likely to be considerable delay before rebuilding can take place; where a scheme is in force or likely to come into operation in the near future, the right given in respect of "existing buildings" by the Act of 1932 may be lost by the effluxion of time.

But the Minister, by Section 33 of the Act of 1944, may suspend any scheme in force and reimpose interim development control. It is believed that considerable use may be made of this power having regard to the need for recasting many existing schemes to accord with new regional plans.

Although, in any case likely to be affected, careful consideration must be given to the possible loss of rights in respect of "existing buildings," in practice, even if the present law remains unaltered, there are not likely to be many cases affected. Interim control is likely to remain in being in most areas for a considerable period; and as stated, until it ends, the two-year period does not begin to run.

With reference to "existing use" the break in use due to circumstances arising out of the war may extend over a considerable time; but so long as the break started in the war period, the limit of 18 months does not appear to commence until it becomes practicable for the "existing use" to be reinstated.

Where war damage is the cause of the break in use it will be a question of fact as to the time when it is possible for the use to be resumed. In other cases, as for example where premises have been requisitioned, the period again will begin to run from the date at which resumption is reasonably possible; for example, it may not be possible until extensive repairs are done for which a licence has to be obtained.

TOWN AND COUNTRY PLANNING ACT, 1932.*

So far we have only dealt with what might be called the Code for Interim Development. Now it is necessary to refer to some of the provisions of the Act of 1932 to enable consideration to be given to the rights an owner may have to compensation as the result of a refusal to grant an interim development consent, or in consequence of the imposition of restrictions.

The general right to compensation is given by Section 18 in respect of injurious affection to property consequent on the coming into operation of the provisions of a scheme, or the execution of works in accordance with the scheme.

By Section 19 the Minister may approve the insertion in a scheme of provisions excluding compensation in respect of certain restrictions, but the right to receive compensation in respect of "existing use" and "existing buildings" is preserved by Section 19 (2) (ii).

No claim can be made in respect of a refusal to consent, or in respect of the imposition of conditions in the interim period until the scheme becomes final; although an authority (by Section 10 (4)) can offer a contribution to the loss suffered by the applicant. In the Memorandum issued with the Order of 1945 specific attention is drawn to this, presumably to indicate that such an offer might in some circumstances reasonably be made in view of the long delay that may occur before a scheme takes effect.

Before dealing with the complicated cases it is convenient to refer to conditions imposed in respect of the external appearance of a building. It is to be doubted whether a claim of any substance will arise. Requirements as to design are unlikely to involve an owner in any loss or additional expense which would form the basis of a claim.

The remaining cases where a claim is likely to arise are

- (a) where a restriction is imposed requiring a "set back" to a new building line.
- (b) A restriction on site cover.
- (c) A restriction on cubical extent.
- (d) A restriction on user.

Where a value payment has been determined the owner has been compensated by the value payment for the building destroyed, and is left with a site valued after damage on the basis prescribed by the Second Schedule to the War Damage Act, 1943; consequently as it has been valued on prices ruling in March, 1939, it is to be presumed that any rights relating to "existing building" or "existing use" have been taken into account in the value so determined.

At the time of the coming into operation of a scheme, provided that these rights have not been lost by the effluxion of time previously referred to in connection with Section 45 of the Act of 1944, the site would have a value which can be similarly determined, but based on prices current at the time.

The imposition of restrictions will reduce the value of the site, and it is suggested that the claim to be submitted is the difference between these values.

When an owner is entitled to a cost of works payment and no restrictions are imposed, he owns a site on which he can re-erect a building similar to the one previously existing, and he will be able to recover the "reasonable cost" from the War Damage Commission.

In effect, he may be said to own a site with a reversion to a building of a certain value which will come into being after a lapse of time.

If restrictions are imposed which reduce the value of the building which

can be erected, his loss, it would appear, can only be measured by a comparison of the values of the buildings when erected with and without restrictions—and not by a comparison of site values.

If the restrictions are of a very onerous character, or if limitations are placed on the use of a building on the site, it may not be possible to "make good" the damage in a way which will entitle the owner to a cost of works payment; he may have to accept a "converted value payment" as provided for by Section 13 of the War Damage Act, 1943. In such a case it is suggested that the measure of the loss to the owner is the difference between the value of his rights to a re-erected building and the present value of the site as restricted, setting off against this difference the amount of the converted value payment due to be paid by the Commission.

The position will be similar to that which arises in the case of the compulsory acquisition of a site in respect of which a cost of works payment is due under the powers given by the Act of 1944; but for the reasons indicated a different approach appears to be justified.

When a claim has to be made it must be submitted in accordance with the clauses of the Scheme when it comes into force. In this connection attention is called to Clauses 54 to 60 of the Model Clauses; these regulate procedure in respect of existing buildings and existing use.

For a period of five years from the 17th November, 1944, the basis of compensation for land taken and for severance is provided by the Act of 1944, whereby such compensation is to be assessed on the basis of prices ruling in March, 1939.

But where conditions are imposed by an Interim Development Authority and where no land is taken, it would seem that compensation is regulated by Section 18 of the Act of 1932, and is not subject to the restrictions imposed by the Act of 1944.

It is obvious that there is likely to be considerable delay between the time of the decision on the interim development appeal and the coming into force of the Scheme.

When it is possible for a claim to be submitted, account can be taken of the additional injurious affection (Section 18 (2) of the Act of 1932) due to a refusal to grant an interim consent.

SCHEMES NOW IN FORCE.

Consideration so far has been restricted to interim development procedure. In an area where there is a scheme in operation, reinstatement of war damage will be regulated by the clauses of the Scheme, which should be consulted in each case, notwithstanding that departure from the Model Clauses is unusual. Proviso (1) to Clause 55 is of importance as it enables an authority to require the erection of a "substituted building" of equal cube, but in conformity with the Scheme.

Where such a requirement is made it may be of importance in relation to "permissible amount" in a similar way to restrictions already referred to relating to cube or building lines.

The basis of a claim in such a case will be on the basis already referred to, namely, that provided by Section 18 of the Act of 1932.

PROCEDURE.

In conclusion I have prepared a few notes on procedure :—

(1) It is first necessary for the owner to decide, at least in outline the way in which he desires reinstatement to be carried out. If a cost of works payment is due and alterations of a substantial character are contemplated, a preliminary approach to the Commission will be desirable to obtain their approval to the proposed "making good" (Practice Notes, Second Series, paragraph 9).

(2) Inquiries should be made to find out if any direction under Articles 5 or 6 has been made or is pending. If no changes in cube or appearance are intended, and no direction has been made, no consent is necessary. Probably it would be wise to notify the authority of the intended works.

(3) The stage at which any scheme in preparation has arrived and details of any proposals regarding use, site cover, building lines, cubical extent or use, which may affect the site, should be ascertained.

(4) Any proposed restrictions must be considered to determine

(a) In the case of a cost of works payment that "making good" will still be practicable, and

(b) in all cases to determine if reinstatement in a form suitable to the owner is possible.

(5) If the restrictions proposed in the Scheme, or in force under a direction, are too onerous for a practicable scheme to be carried out, it will be necessary to consider an application for a contribution to the owner's loss under Section 10 of the 1932 Act.

(6) If a scheme is practicable, plans can be prepared and submitted for approval. If it is considered that any restrictions which have been taken into account in the plans submitted, or are imposed by a consent, will give rise to a subsequent claim for compensation, the interim authority should be informed so as to establish the owner's position at the earliest possible moment.

(7) When plans have been approved it will be possible to approach the Commission to determine the "permissible amount" (Practice Notes, Second Series, paragraph 7), and for arrangements to be made for the work to be done.

Mr. D. M. LAWRENCE, B.Sc. (Fellow), who proposed a warm vote of thanks to Mr. May, said it was typical of the latter's courage and ability in professional matters that he should have undertaken to write a paper on a subject which not only was one which would be of first-class practical importance in the next two or three years, but also one so set about on all sides with legal and technical pitfalls.

The Institution was very glad to have the opportunity which the paper afforded of discussing the General Interim Development Order of 1945. It was true that that Order was due to expire in February next, but there would be general agreement that the circumstances in which it was made had not changed substantially since 1st May, 1945, and Mr. May was on very safe ground in assuming that a similar Order, though of a more permanent nature, would almost certainly take its place.

He ventured to differ from Mr. May on one minor point in regard to that Order, namely, the relation between Article 4 and Article 8. Personally, as he read Article 4 the effect was that the consent of the Interim Development Authority was required to any restoration of war damage which involved an increase in cubic content or a change in external appearance; if either of those factors was present, then consent must be obtained. Article 8 seemed to be intended to cover the case where there was no change in cubic content, but presumably there was a change in external appearance, and its object seemed to be to limit or prescribe the grounds on which the Interim Authority might refuse its consent in that type of case. It did not seem to him, bearing those facts in mind, that there was anything in Article 8 which was inconsistent with the general policy of Article 4.

He had had an opportunity of seeing something of the practical aspects of Article 5 directions during his period of service at the Ministry of Town and Country Planning, so perhaps he might usefully touch on one or two points of detail which obviously could not be included in a paper of so general a nature as that under discussion. An Article 5 direction required, of course, the consent of the Minister of Town and Country Planning, but when that consent was given the only notice was by means of advertisement in the local Press and in the *London Gazette*, which might very well be overlooked by an owner. Mr. May had therefore done a real service by calling attention to the importance of finding out whether there was an Article 5 direction in existence before embarking on any substantial work of restoration of war damage or alteration or maintenance of buildings.

The direction could be inspected at the offices of the local authority, and it would probably be found that its language required to be examined rather carefully, because it varied considerably in different cases. It might be found, for example, that the direction extended to the whole of the area of the Interim Development Authority, or, more probably, that it extended to a certain designated or specified area only. It might be found that it covered all types of development which were mentioned in Article 4; on the other hand, it was far more likely that it would relate to certain types of development only. For example, it might relate to development under Class III or Class IV; i.e., restoration of war damage or alteration or maintenance of buildings. In the latter case, it might extend to all types of building in the authority's area or be limited to certain types of building only. For example, if it was a direction relating to Class III development it might apply to houses only in a particular area, or it might apply to industrial premises only.

It had been the general policy, he thought, to prescribe in such directions a limit of cost up to which work might be carried out without the consent of the Interim Authority being obtained. Mr. May had referred to the £300 limit in the City of London. If the direction related to maintenance works, it would probably be found that the limit referred to the amount of work which could be done in any one year. If there was an Article 6 direction, the consent of the Minister was not necessary, but on the other hand notice would have to be given to owners. As Mr. May said, that would probably be met with only in isolated cases.

Passing from the General Interim Development Order to the Town and Country Planning Act, 1944, Mr. May referred to the provisions of Section 45

of the Act, under which the period within which an existing building could be reinstated was extended up to a limit of two years from the end of the war period or from the coming into operation of a Scheme. It was worth noticing that that section applied only where the existing building was destroyed or demolished during the war period; i.e., on or after 3rd September, 1939. There might be buildings which were burned down or otherwise destroyed just before the war, but in those cases it would seem that the concession contained in Section 45 of the Act would not apply. It would have been impossible to reinstate such buildings during the war, owing to war-time conditions, but they seemed to miss the benefit of that section.

With regard to the protection given in respect of an existing use which had been discontinued, he noticed that the section also applied to a case where the resumption of an existing use had been prevented by some restriction imposed under interim development control, but only—and this was important—in cases where that restriction had been imposed by the Minister himself on an appeal being made to him.

He wished he had more time to comment on the various interesting points which Mr. May had raised with regard to the application of the 1932 code of compensation to war damage cases. There was one point he would like to make in connection with Mr. May's reference to the 1932 basis of compensation. Mr. May made the important point that the restriction of compensation to the basis of 1939 prices under the Town and Country Planning Act, 1944, applied only to cases where land was acquired compulsorily or where land was injuriously affected by the carrying out of works on land which had been acquired. Under the Town and Country Planning Act, however, they were not dealing with either of those cases, but with the case of a property which had been depreciated in value by the imposition of restrictions under a town planning scheme, and he agreed with Mr. May that under the existing law the position was that that type of compensation should be assessed on the basis of existing values. It was possible that in the near future that point might cease to have very much practical importance, when the provisions of the new compensation and betterment legislation were made known, but he thought it was worth noticing for the time being.

Mr. May had also pointed out that if on the coming into operation of a scheme an owner was entitled to compensation under the 1932 Act, he could also claim compensation for any injury which his property might have suffered, or any loss which he might have sustained during the interim period. It was worth noticing, however, that the owner was only entitled to that compensation provided that the interim restriction had been imposed by the Minister himself on an appeal being made to him from the decision of the Interim Authority. In other words, if one sat down under the decision of the Interim Authority in the matter of imposing restrictions, one lost any right to compensation for loss during the interim period.

In that connection, and with regard to No. (6) of the author's notes on Procedure at the end of the paper, while he entirely agreed with No. (6) as applied to cases where a scheme was actually in force he would suggest, for Mr. May's consideration, that in the case of transactions during the interim period the only way in which an owner could definitely secure his right to compensation, apart from inducing the authority to make a contribution in respect of his loss under Section 10 of the Act, which was referred to earlier

in the paper, was to make an appeal to the Minister against any prohibition or restriction which had been imposed by the authority.

Mr. J. D. TRUSTRAM EVE (Fellow), who seconded the vote of thanks, said the Institution had reason to be grateful to Mr. May for diving into so vast a subject for its benefit. It was true he had been clever enough to select a narrow part between two vast seas of legislation, war damage on the one hand and town planning on the other, but a great deal of research and time must have been necessary to discover the points at which those two met.

The country had got into a most complicated tangle of legislation. It all arose, he thought, from everyone going about and saying "What frightful ribbon development! What ugly bungalows! Why cannot they be done away with?" If the result was the present tangle of legislation, would not it be better to go back and look again at the bungalows and the ribbon development, and ask whether the one muddle was not preferable to the other? On the other hand, surveyors must remember that it was only people like themselves, and perhaps a few unfortunate property owners, who had to deal with this muddle of legislation; 90 per cent. of the population merely saw that the bungalows disappeared.

There was a very real risk of planning in this country drifting into a permanent interim development procedure. There were signs everywhere. In the present paper he had marked four places where Mr. May seemed to think that the interim procedure would continue for a very long time. Things might drift on for so long that that procedure would become permanent—a great danger because the present interim procedure was wholly unsuited to permanency, or even to a prolonged period.

Having listened to two experts, it was with some trepidation that he now turned to a few technical details. He had read Article 8 of the Interim Development Order in the same way as Mr. May, and had therefore been interested but disappointed to hear that Mr. Lawrance did not agree—namely, that he thought it applied only to directions under Articles 5 and 6.

Both the previous speakers had emphasised the importance of finding out about Article 5 directions. Perhaps the Institution could help its members by publishing information in the *Journal*, as had been done with so many other Ministerial Orders in the past. In making that suggestion he had in mind only directions under Article 5; those under Article 6 dealt with special and particular properties and could not be thus discovered.⁽¹⁾

Mr. May suggested that there would be little compensation for having to alter or restrict the external appearance of property. Personally he thought there might be an exception. Some of the multiple shops made a point of their branches having a uniform appearance all over the country. If that uniform appearance were not allowed, refusal to allow it might form the basis of a claim for compensation for loss of profits, because it could be said that people would not know where the premises were.

Mr. Lawrance had mentioned that Section 45 of the Town and Country Planning Act, 1944, did not apply to a building destroyed during the two years immediately preceding the war. It was very bad luck for an owner who,

(1) *Editor's Note.*—Efforts were already in train at the time of the meeting to see whether the Institution could help in the way indicated by Mr. Eve. So far the twin difficulties of lack of adequate space in the *Journal* and lack of the necessary staff to enquire into and follow up all the directions have proved formidable, but efforts to surmount these difficulties are still continuing.

having had a "civilian" fire the day before war broke out, could not rebuild during the war and now lost his right to do so because Section 45 definitely referred to buildings destroyed during the war period. Personally, he thought that that applied equally to the existing user. Whereas before the war there was an eighteen months' grace in which one might reinstate the user, if the latter had lapsed for, say, six months before the war, Section 45 did not reinstate it, and it was lost for ever, because it was only the user that lapsed during the war for specific reasons which counted.

With regard to compensation where there was a value payment on a site and it became restricted under town planning legislation, Mr. May had said :—

"At the time of the coming into operation of a scheme, provided that these rights have not been lost by the effluxion of time previously referred to in connection with Section 45 of the Act of 1944, the site would have a value which can be similarly determined, but based on prices current at the time.

"The imposition of restrictions will reduce the value of the site, and it is suggested that the claim to be submitted is the difference between these values."

If Mr. May meant the difference between the site value at the date of the notice of restriction and the after damage value under the War Damage Act he did not quite follow him, because he would have thought that it was necessary to value with the restriction and value without the restriction, the difference being compensation. He agreed that in the case of sites where a cost of works payment was due, compensation should be assessed as if there were a building there, because the owner was entitled to put one up and be paid for it by the War Damage Commission.

In Section 14 of the War Damage Act, he hoped, though it might be vainly, he had found a point which Mr. May had missed. It seemed to him that under Section 14, if one had a large hereditament, which for war damage purposes, was a single hereditament and the local authority took a few feet of the frontage off for road widening purposes, one would lose the whole cost of works payment, which would then become a value payment. He hoped he was wrong, but if that were the case, it seemed grossly unfair. If he was right, could Mr. May tell him whether he could claim from the acquiring authority the difference between the value payment and the cost of works payment as injurious affection on the land not taken?

He agreed with Mr. May that compensation under Section 18 of the 1932 Act would not be related to prices ruling in 1939, as it was not payable in respect of the compulsory acquisition of any property. Mr. Lawrance had somewhat gloomily suggested that that point might cease to have very much practical importance when the provisions of the new compensation and betterment legislation were made known. As far as he personally could see, all Governments seemed to be determined that the compensation payable to owners should not be their loss but some academic figure worked out according to some formula laid down by persons who found it possible to salve their consciences with the belief that they were doing the right thing. Personally he felt the 1939 basis was utter nonsense. It was an endeavour to do justice to the public, but it did not do so, and it was unjust to those affected. Even if it were right to relate to 1939 prices for, say, five years, the value of property acquired, it could not be right in the case of compensation for town planning restrictions, because there the loss to the owner was what he could not do to his property now, and that concerned the future, not the past. It was not logical, therefore, to extend the 1939 basis of values to restrictions for planning, which came into a different category altogether.

Mr. D. E. TAYLOR (Professional Associate) (Past Chairman, Junior Central Committee) said that town planning legislation was fast becoming such that Mr. May's paper could not fail to be of the utmost value to general practitioners.

Regarding Article 8 of the General Interim Development Order, he did not regard himself as a court of appeal, but he had read it as Mr. Lawrance had done.

Section 45 of the Act of 1944 referred to Section 19 (2) of the 1932 Act, and with that went subsection (3), which presupposed that consent could be refused. If he was right, would a claim to compensation lie in such a case?

The powers for suspension of a scheme and the return to interim development, would perhaps give greater fluidity in planning, which might be desirable, but he hoped that if new legislation were introduced shortly some attention would be given to the position of owners with regard to compensation, which at the moment was limited to what he might call an *ex gratia* contribution.

Section 11 of the 1944 Act referred to the obligation of a local authority to purchase war damaged property where permission to develop had been refused. That seemed a matter which might well be linked up with the present paper.

In his speech to the Auctioneers' and Estate Agents' Institute on 3rd January, Mr. H. W. Wells referred to the passing of new legislation. He hoped any such legislation would consolidate previous enactments in that respect, so as to prevent town planning getting into the sort of muddle that the Rent Acts were in.

Mr. H. W. WELLS (Fellow) (Ministry of Town and Country Planning) said that before coming to the meeting, he had obtained the consent of the Minister to make a statement on how he, the Minister, regarded the administration of Article 5 in relation to the control of war damage repair. The Minister was not concerned in Article 6 directions, unless there was an appeal. Personally, he thought it might help surveyors in general if the Ministry's attitude of mind towards Article 5 were generally understood. The general principles which he proposed to mention were the principles which the Minister had in mind when approving an Article 5 direction submitted to him by a local authority. The principles were :—

“ 1. As little control as is necessary in order to safeguard development in the foreseeable future.”

“ 2. In respect of Article 5 areas, the local authority must satisfy the Minister that the control is really necessary, having regard to the local authority's *intentions*.” That meant that the local authorities must have something positive in mind.

“ 3. Article 5 areas are only agreed to normally by the Minister where the area concerned is one in respect of which a local authority can demonstrate the necessity of acquisition within a period of up to fifteen years or thereabouts. Where the Article 5 area application is not, however, related to anticipated acquisition”—which was the abnormal case—“there must be strong other reasons for the Minister to approve a direction under Article 5.” For example, the Minister might approve one where there was a number of industrial buildings which had been badly damaged or destroyed by enemy action in an area which was required for residential purposes, and it was clear, perhaps because of the intensity of the damage to the industrial

buildings, that industrial buildings should not be re-erected, though there was no intention on the part of the authority to acquire that area. One such area was in Birmingham, where a large number of small industrial concerns were bombed in the central part of the City. There the Article 5 area covered something like 12,000 acres and was related only to industrial premises, the purpose being to restrict the rebuilding of industrial premises in the heart of Birmingham, where they were not now wanted; they were wanted, from a planning point of view, on the outskirts, in proper trading estates, and not mixed up with commercial, shopping and residential buildings.

"4. The Minister encourages the use of Article 5 in those war-damaged areas which should be redeveloped as a whole under the Town and Country Planning Act, 1944." That referred to those areas where the local authority intended to apply for a declaratory order under Section 1 of the Act of 1944.

"5. In every Article 5 area the restoration of war damage is permitted without interim development permit up to some stated limit." That figure, to which the Minister's consent was necessary at the same time that he gave his consent to the direction, was one which would allow restoration of minor damage, and it was varied according to the circumstances of the particular area. For example, if the area concerned was composed of a large number of small buildings, which could be almost rebuilt for £300, the maximum limit would be not £300, but perhaps £50. In the case of the City of London, on the other hand, there was, as Mr. May had mentioned, a limit of £300.

There were one or two points which he had wished to make on the paper, but he found that Mr. Lawrance had dealt with most of them. There were, however, two which Mr. Lawrance had not mentioned. Perhaps the most important part of the paper from the point of view of the practising surveyor was the last section, which dealt with Procedure. Under Point (2) relating to procedure there was still the question of local bye-laws. That was not, of course, a planning matter, but it would be more than wise to consult the local authority on that question. Under Point (5) he would like to see, at any rate in so far as interim development was concerned, something said about the consideration of an appeal to the Minister.

Mr. S. E. MEERING (Professional Associate) quoted a concrete case arising under an Article 5 direction. A client had a shop in a blitzed area, where a direction had been made by the development authority that no work costing more than £100 was to be done, the reason being that the property was in an area which was likely, under the 1944 Act, to be an area subject to compulsory purchase. His client could put his shop into a fit state to carry on trade for about £300, and made application accordingly, but the authority would not grant permission unless he signed an agreement that he would not claim, when the property was compulsorily acquired, any additional compensation as a result of his doing those repairs. Perhaps Mr. May could give the answer.

Regarding interim development generally, he thought there would be a good deal of use in future of the powers given under the Act of 1943 for the planning authority, with the consent of the Minister, to revoke interim development already granted, in view of new planning schemes.

Mr. H. G. MAY, in reply, thanked the proposer and seconder of the vote of thanks for their almost embarrassingly kind remarks. He had hoped that Mr. Wells would express an opinion on Article 8, because they were "two all"

at that time, and it would have been interesting to have a majority one way or the other. Personally, he was unable to give any further enlightenment, but having listened to Mr. Lawrance he did not think there was very much difference between them. The point was rather a fine one, and, without seeking to evade any responsibility, he felt it was not a matter which would give much trouble, because obviously a sensible man in dealing with all such cases would consult with the local authority, if the local authority was one which could be consulted, as most of them, he was glad to find, were. Authorities such as that mentioned by Mr. Meering, which seemed to be misbehaving, were not common. In that particular case, he thought Mr. Meering would be wise to send the correspondence to the Ministry of Town and Country Planning, because he did not think that the authority in question had the power to do what they sought to do.

He was very much obliged to Mr. Lawrance for his contribution, which filled in some of the gaps in the paper. He did not know whether or not to be appalled at the thought of a new code of compensation. It was too much to hope that it would consolidate what had been done before; it would probably be another addendum to an addendum to an addendum, making it necessary to collate fourteen different subsections before being able to tell a client what his true rights were. If the new Bill would deal with the subject comprehensively he thought most surveyors would welcome it, even though they still felt that they were more planned against than planning!

He would have liked to follow Mr. Eve down some of the attractive by-roads that he indicated, and with him to indulge in a candid expression of feelings about some of the modern legislation and the rights of owners and the basis of compensation that they would like to see. He had felt, however, that it was his duty to explain the law and the order as they existed.

He was not quite sure what the right cure was for bungaloid growths, what Osbert Lanchester had called "the variety of architecture known as By-Pass Variegated," but it was not possible to cure æsthetic crimes by Acts of Parliament, and the only ultimate cure was undoubtedly the elevation of the taste of the public. He was inclined to agree with Mr. Eve that there had been a spate of legislation which had led to the replacement of one kind of muddle by another. He was also at one with him in fearing that the interim development period might be extended for a very long time. He hoped the present Minister would appreciate the evils and uncertainties of interim development and would, in the new Bill to which reference had been made, find some way of dealing with what was admittedly a very difficult situation.

With regard to Mr. Eve's point under Section 14 of the 1943 Act referring to the client who had had a few feet taken off the front of his property for road widening, he thought that point was dealt with in the discussion on the recent paper by Mr. Michael Rowe, and that Mr. Rowe had indicated that the Commission would agree to the amount being payable in respect of a site which, though not identical with, was substantially the site in respect of which the damage occurred. Therefore he thought that the case would be dealt with by the local authority buying the strip which they wanted under the Act of 1944, and by an agreement as to the amount to be put on what was left.

He was grateful to Mr. Taylor for referring to Section 11 of the Act of 1944. He had had to omit a good deal in order to keep the paper within a reasonable compass. It might often be better for an owner, as the law stood, to attempt to find a use for a site rather than to take advantage of Section 11, because in due course he would get compensation under the Act of 1932 for restrictions, whereas if he said "Take it away; I cannot use it," he would only be paid for it on 1939 prices.

Mr. Wells had done a good service by indicating some of the views of the Minister on procedure, and everyone would be grateful to him for his interpretation of the Minister's views. Mr. Wells was perfectly correct in his criticism of the notes on procedure in the paper. Personally, he had paid members of the Institution the compliment of realising that they would all remember about having to comply with bye-laws, Acts and Regulations, irrespective of town planning and war damage. In London one did not make an application to the Interim Development Authority—i.e., the London County Council—in respect of bye-laws unless one sought waivers or unless one was involved in the difficulties which arose under the London Building Act; it was only necessary to apply to the local sanitary authority in respect of drains and so on. He agreed with Mr. Wells that in (5) reference should be made to the right of appeal.

He was obliged to Mr. Meering for filling another gap in the paper. The reference to the power of revocation of interim development was important, but it went beyond the rather narrow objective he had set himself, of dealing solely with war damage in relation to town planning.

THE PRESIDENT, in moving the vote of thanks, said that an expert had presented the paper, and experts had discussed it. Personally, he was not an expert but a general practitioner, and so he would not go into detail, but on one point he would venture to ask for enlightenment. Early in the paper reference was made to Article 4, Class I. He would like to know exactly what types of development Class I did permit. It permitted "Development authorised by any Act or Order . . . except the erection, alteration, or extension of buildings." What kind of development was left; did it mean that one could make a new road or street?

In a paper where every word was of practical value, the majority of surveyors would perhaps learn most from the concluding notes on procedure. He would like to express his personal thanks to the author for having done so much work and for having provided members with a paper of the greatest practical use at the present time.

The vote of thanks was carried with acclamation.

Mr. MAY briefly responded and replying to the President's question, said that the doubt arose through undue condensation in the paper. The definition of Class I development was:—

"Development authorised by any Act, or by any order approved by both Houses of Parliament, or carried out under powers conferred by an order made by or requiring confirmation by or the approval of a Government department, being an Act or order which specifically designates the land upon which the development may be carried out, except the erection, alteration or extension of buildings"

The proceedings then terminated.